IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.199 OF 1998

Pundalik S.Sangamnere & Anr. .. Appellants.
Vs.
Trimbak A.Sangamnere & Ors. .. Respondents.

Mr.R.A.Thorat a/w Mr.U.B.Nighot for the appellants.
Mr.S.A.Rajeshirke for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 8TH JANUARY, 2007

P.C.:

. Heard learned counsel for the appellants and the respondents.

2. This second appeal by defendant nos.4 and 5 is directed against the concurrent findings recorded by the courts below. Respondent no.1 filed a suit for declaration and injunction and, since he lost possession of the suit property pending the suit, also prayed for possession thereof. The trial Court decreed the suit partly and since no decree of possession was passed, respondent no.1, against that part of the judgment and the appellants, both filed appeal/cross objections before the appellate court. The appellate court dismissed the appeal filed by the appellants and allowed the cross objections and directed to restore

possession to respondent no. 1. The appellants - defendant nos.4 and 5 are the purchasers of the suit property from defendant nos.1 to 3. Mr.Thorat, learned counsel for the appellants challenged the decree mainly on the ground that the sale deed on which the claim of respondent no.1 was based upon had not been produced on record. The case set up by the deceased - respondent no.1 is that in 1957 shares of Tatya and Khandu were purchased by him and since then he was enjoying the entire property as exclusive owner. Defendant nos.1 to 3 represent the branch of Khandu whereas respondent no.1 - plaintiff represents the branch of Ananda. Tatya, Khandu and Ananda were the brothers having one third share each in the suit property. It appears in 1973, Hari, the son of Khandu, disturbed the possession of respondent no.1, which forced him to file a suit for injunction simplicitor against Hari. That suit was decreed in terms of the compromise in which Hari Khandu admitted the claim of respondent no.1 that he had purchased the shares of the branch of Tatya and Khandu. Defendant nos.1 to 3 contended that the compromise decree is not binding on them. Even if it is assumed that the compromise decree in the suit filed in 1973 is not binding on defendant nos.1 to 3, in my opinion, it is not open for them to contend for the first time that the sale transaction of 1957 by which the shares of

the branch of Tatya and Khandu were purchased by respondent no.1 - Trimbak is not binding on them. As a matter of fact the sale transaction of 1957 had not been disputed either by the appellants or by defendant nos.1 to 3. From perusal of the material placed before me including the written statement I am satisfied that the sale transaction of 1957 had not been disputed by defendant nos.1 to 3. The only averment in the written statement is that the said transaction was not acted upon. In view thereof the courts below have rightly decreed the suit declaring respondent no.1 as the exclusive owner of the entire property. Considering the concurrent findings recorded by the courts below and as I find that there is sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this court under section 100 of the Code of Civil Procedure to disturb the findings of fact I find no substance in the appeal. No substantial question of law is either raised or involved in the instant appeal. The second appeal accordingly stands dismissed.

(D.B.Bhosale, J.)